

REMARKS

I. Claims 1-18 were pending at the time of the April 11, 2006 office action.

Claims 14-18 are allowed.

Claims 1, 11-13 are amended herein.

Claims 2-10 are cancelled.

Claims 1, 11-18 are now pending.

Support for the amendments to claims 1, 11-13 is found in claims 1 and 3 as they were pending at the time of the April 11, 2006 office action and throughout the specification. Prior to this amendment, each of claims 2-13 depended from claim 1. As a result of the current amendments, the limitations of claim 3 were added to the limitations of claim 1. Claims 11-12 were amended so that they depend from claim 1 rather than claim 5, and claim 13 was amended so that it depends from claim 11 rather than 1. Thus, no new matter has been added. Accordingly, Applicant respectfully requests that the above amendments be entered in accordance with 37 C.F.R. § 1.116. Applicant submits these amendments to place the case in better condition for allowance or appeal.

II. Claim Rejections Under 35 U.S.C. § 103

A. Raque, Koziel, and Williams

Claims 1-4 and 13 remain rejected under § 103 as being unpatentable over either Raque ('349) or Raque ('621) (collectively Raque) in view of Koziel et al ('865) and Williams. Applicant respectfully urges that the remaining rejections to amended claims 1 and 11-13 are overcome.

Claim 1 as amended, from which the other rejected claims 11-13 depend, specifies using for the secondary seeds "a mixture of homozygous seeds and heterozygous seeds for a seed coat color difference." There is no suggestion or motivation in Raque or Koziel to make such a secondary seed mixture. Raque teaches dyeing, which is irrelevant to the seed coat color genotype of the plant. Even assuming *arguendo* that Koziel contains a motivation to use a

secondary seed component having a natural seed coat color difference, that motivation is, at best, to use a secondary seed component of homozygous seeds only. There is no language in Koziel that justifies the leap from using secondary seeds with a homozygous, genetically engineered color difference between them and the primary seeds to using a mixture of secondary seeds with a natural color difference, where the mixture includes seeds homozygous and heterozygous for seed coat color.

One of the purposes of the invention is for use in identifying transgenic seed in the generation of plants grown from the plant seed mixture. Claim 1, as amended, permits that purpose to be fulfilled, even in generations of plants after the initial plant seed mixture of claim 1 and even if farmers attempted to evade the identification of the transgenic seed by picking out the colored seed in a subsequent generation of seed before planting it. Under claim 1 as amended, picking out the colored seed would inevitably miss the heterozygotes and therefore the recessive color trait would reappear in subsequent generations and expose farmers attempting to pass off grain produced from seed having genetically modified traits as non-transgenic.

For all these reasons, the Applicant respectfully submits that the Examiner's rejection of claims 1 and 11-13 under § 103 is overcome.

B. Raque, Koziel, Williams, and Wright

Claims 5-12 are rejected under § 103 as being unpatentable over Raque, Koziel, Williams and Wright. The Applicant respectfully submits that the rejections to claims 11-12 are overcome in light of the amendments to those claims submitted herein for the same reasons as for the previous rejection. The limitation to the use of near-infrared spectrophotometry for wavelengths from 550 to 650 nanometers or by optical scanning technology is no longer recited in claims 11-12. Thus, the only remaining inquiry with respect to this basis for rejection is the patentability of claims 11-12 in view of Raque, Koziel, and Williams, which is the same topic addressed in Section II.A, above.

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In light of the above amendments and remarks, the Applicants respectfully submit that all outstanding objections and rejections for claims 1 and 11-13 as amended are overcome.

The Examiner is encouraged to call the undersigned should any further action be required for allowance.

Respectfully submitted,



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